IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 4674 of 2006

Date of Decision: 8.09.2006

M/s Aerrizona ...Petitioner

Vs.

Gurdarshan Singh Brar ...Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.A.K.Chopra, Senior Advocate,
with Mr.Kanwaljit Singh & Ms.Shaibya Sood,
Advocates for the petitioner.

Mr.Ajay Tiwari, Advocate,
for the respondent.

Vinod K.Sharma, J.

The petitioner has challenged the order passed by the learned Civil Judge (Senior Division), Chadigarh vide which the application moved by the plaintiff-respondent for police help to

implement the order of injunction has been allowed and the application moved by the petitioner for production of site plan has been dismissed.

On an application moved under Order 39 Rules 1 and 2 of the Code of Civil Procedure (for short the Code), Civil Court was pleased to issue ad-interim injunction directing the petitioner-defendant to remove the violation within one month of the passing of the order. It was also ordered that the petitioner could run discotheque in the premises, meanwhile, if permitted by the Administration.

The case of the plaintiff-respondent was that the petitioner-defendant was violating the orders with impugnity and he was running the discotheque without any permission from the Administration and therefore, police help was asked for to ensure the compliance of the order by the petitioner-defendant by not running the discotheque unless allowed to do so by the Administration.

The said application was opposed by the petitioner on the ground that the same was not maintainable and it amounted to abuse of the process of the Court. It was further the stand of the petitioner-defendant that the Court never passed any order stopping the running of the discotheque without the permission of the Administration. It was claimed that the orders of the Hon'ble High Court were binding wherein the Administration was directed to decide the matter under Item No.107.

The case of the petitioner-defendant was that the said matter was pending before the Chief Administrator where the decision was yet to be taken and therefore, the application being without any merit was liable to be dismissed. It was also the case of the petitioner-defendant that in pursuance to the orders passed by the learned Civil Court that violations as found by the Chandigarh Administration vide their letter dated 18.8.1985 stood removed. It was also claimed that the plaintiff-respondent should be directed to bring the sanctioned plan of SCO so that the matter could be properly argued. Learned court below after hearing the argument observed that the application moved under Order 39 Rules 1 and 2 of the Code for temporary ad-interim injunction was disposed of with the following observations:

> " The circumstances of the case clearly reveals that the discotheque club under the name and style of Aerizona is being run by the respondent despite all violations for a consideration time. The Administration has not opted to stop the function of the club despite the fact that the same has violated the norms and it is danger for the safety of the disco club visitors but this Court is of the opinion that time has to be granted to the respondent to remove the violations i.e. to remove the pucca wall, to remove the

cabin, to remove the toilets, to make the stair case broader and to install all safety equipments, the water sprinklers and other safety measures to make the basement fully equipped to deal with all contingencies like fire etc. The respondent has not honoured their commitment before the Administration. Hence, this Court by passing an adjourned interim mandatory injunction directs the respondent to remove the above violations within one month and they can run the discotheque if Administration allows them meanwhile, but if they failed to abide by or failed to abide by the directions given by this Court. They will stop using the basement for discotheque if they failed to furnish compliance report before the Administration after the expiration of one month from the date of order. It is further made clear that if respondents removed the violations which have been noticed by the Administration and have already been detailed above, within time of one month and they furnish the compliance report before the Administration, the Administration shall be at liberty to consider the request of the respondents and in that eventuality applicant shall be bound to move the

> Administration for use of basement for habitat purpose and if the rules permits, the Administration will be at liberty to grant permission to the respondent and applicant for the purpose and in that eventuality if the building is resumed for any violations committed by the applicants,the respondent shall be at liberty to seek appropriate damages from the applicants for the loss which he suffers on account of inaction, acquiescence on the part of the applicant. With the finding and observations given above, the application stands disposed of."

The appeal filed against that order was dismissed by Shri V.K.Mehtra, learned Additional District Judge, Chandigarh and the said order was confirmed by this Court on 24.7.2006. The court observed that the said order has attained finality and thereby the defendant-petitioner was bound to comply with the said order. By relying upon the judgment of this Court in **Gram Panchayat Darolijat Vs. Smt. Lokesh devi 1999 (2) P.L.R. 741, Sher Singh Vs. Jangir Kaur 1990 (1) P.L.R. 630 and Thakur Singh Vs. Harijan Sudar Samiti, 1995 (1) Civil Court Cases 410** learned Trial Court allowed the application for police help and dismissed the application moved by the petitioner herein for production of sanctioned site plan.

Mr.A.K.Chopra, learned senior counsel appearing for the petitioner vehemently argued that the present revision petition was not maintainable as the petition under Order 39 Rule 2-A filed by the plaintiff-respondent was pending and therefore, there was no occasion for enforcement by way of police help as two parallel proceedings cannot be continued. Learned senior counsel thereafter contended that the learned Trial Court has not considered that the petitioner had filed an affidavit in the court stating therein that all the violations were removed and there was nothing pending which was required to be enforced by way of police help. The contention of the learned counsel for the petitioner was that though the affidavit remained unchallenged, the learned Trial Court wrongly ignored the same and therefore, failed to exercise jurisdiction vested in it properly which has resulted in miscarriage of justice to the petitioner. It was also contended by the learned counsel for the petitioner that no finding has been recorded by the learned Trial Court as to whether the violations stood removed or not.

Mr. Ajay Tiwari, Advocate, appearing for the respondent contended that the contention raised by the petitioner to the effect that the violations have been removed were considered by this Court while disposing of the revision petition No. 5946 of 2005 and it was found as a

matter of fact that the petitioner was not entitled to continue to running of discotheque as no permission was granted by the Chandigarh Administration.

I have considered the arguments raised by the learned counsel for the parties and find no force in the present revision petition. The affidavit filed by the petitioner was accompanied by the compliance report which reads as under:

> " That the above mentioned building was resumed regarding which two appeals have been filed which are pending before the Finance secretary cum Chief Administrator, U.T., Chandigarh. In the said appeals, the applicant has made humble submission that inspection be carried out in his presence as he is prepared to remove all violations which are non compoundable. According to the applicant, there is no violation which is non-compoundable. However, the department may depute any officer/J.E. to inspect the premises and give report.
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> An immediate inspection may please be carried out so that tenancy premises are enjoyed in lawful manner by the applicant. The Civil Judge (JD) has directed the applicant to set right the violation within one month.

Photocopy of order is enclosed."

The learned Trial Court, therefore, rightly came to the conclusion that the reliance placed by the petitioner on the compliance report was totally misconceived, whereas he has specifically mentioned that the petitioner was prepared to remove the violations which are not compoundable, and therefore, it was rightly held that the total violations have not been removed.

It may also be noted that the contention of the learned counsel for the petitioner that the Court had not stopped the running of discotheque is also misconceived as would be clear from the observations made by the learned Trial Court while disposing of the application for temporary ad-interim injunction.

The reading of the above order of the learned trial Court as confirmed by the Appellate Court and this court shows that the petitioner was only permitted to run the discotheque with the permission of the Court. Mr. Ajay Tiwari, learned counsel for the respondent pointed out that permission sought for habitable use of the basement was declined by the Administration meaning thereby that there is no permission with the petitioner to run the discotheque. The contention of the learned counsel for the petitioner that stay has been granted by the authorities against the order passed by the Estate Officer and thereby

there is a deemed permission also cannot be sustained. It was pointed out by the learned counsel for the respondent that the stay has been granted only qua the proceedings taken under the Public Premises Act for sealing of the building for violation committed by the tenant on the basis of which order of resumption of building was passed. The learned Trial Court, therefore, was justified in order police help for enforcement of injunction and there is no illegality or impropriety in the order which may call for interference by this court under Article 227 of the Constitution of India.

Dismissed.

(Vinod K.Sharma)
Judge

September 8,2006
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